if, in government antitrust cases, where the Expediting Act precludes appeal to a court of appeals from a final decree, 1292(a) is held to have no application, then a preliminary injunction order would not be an order "otherwise appealable", and 1292(b) would apply. The difference between interlocutory appeals from injunctive orders in a non-government antitrust suit and those in a government antitrust suit would come to this: An appeal may be taken as of right in the former, being governed by § 1292(a), but may be taken in the latter only if both district court and court of appeals jointly see fit to allow it under § 1292(b).

CONCLUSION

It is respectfully submitted that the order of the Court of Appeals denying the petition for permission to appeal under 28 U.S.C. § 1292(b) for lack of jurisdiction should be reversed and the case should be remanded to that court with direction to act on the merits of that petition.

Dated: San Francisco, California, September 20, 1972.

Respectfully submitted,

MOSES LASKY
C. LANSING HAYS, JR.
Attorneys for Petitioner

Of Counsel:

BROBECK, PHLEGER & HARRISON
HECHT, HADFIELD, HAYS, LANDSMAN & HEAD